

**TERMINAL DISCLAIMER TO OBTAIN A PROVISIONAL DOUBLE PATENTING  
REJECTION OVER A PENDING "REFERENCE" APPLICATION**

Docket Number (Optional)  
564462001824

In re Application of: Jay M. SHORT et al.

Application No.: 10/601,319

Filed: June 20, 2003

For: RECOMBINANT PHYTASES AND METHODS OF MAKING AND USING THEM

The owner, Diversa Corporation, of 100  
percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of  
any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any  
patent granted on pending reference Application Number 09/777,566, filed on February 5, 2001,  
as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said reference application may  
be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application. The owner  
hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it  
and any patent granted on the reference application are commonly owned. This agreement runs with any patent granted on  
the instant application and is binding upon the grantee, its successors or assigns.

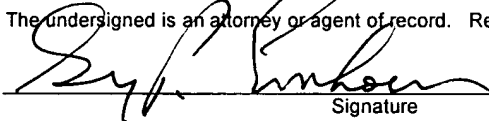
In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant  
application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of any patent  
granted on said reference application, "as the term of any patent granted on said reference application may be shortened by  
any terminal disclaimer filed prior to the grant of any patent on the pending reference application," in the event that: any such  
patent: granted on the pending reference application: expires for failure to pay a maintenance fee, is held unenforceable, is  
found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR  
1.321, has all claims canceled by a reexamination certificate, is issued, or is in any manner terminated prior to the expiration  
of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency,  
etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on  
information and belief are believed to be true; and further that these statements were made with the knowledge that willful false  
statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United  
States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record. Reg. No. 38,440

  
Signature

October 27, 2006  
Date

Gregory P. Einhorn  
Typed or printed name

(858) 720-5133  
Telephone Number

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) is included.

\*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).  
Form PTO/SB/96 may be used for making this statement. See MPEP § 324.

11/01/2006 RMEB/RAHT 00000031 031952 10601319

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